IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2917 OF 2006

R.G. Holdings Pvt. Ltd. & Anr. ... Petitioners

V/s.

Maharashtra Airport Development Company & Anr. ... Respondents

Mr. Navroz Seervai, Sr. Counsel with Mr. Kalpesh Joshi i/b. Malvi Ranchoddas & Co. for petitioner.
Mr. Arun Tripathi with Akhilesh Dubey i/b. M. Tripathi & Co. for respondent No. 1.
Mr. Shashi K. Jain with Ms. Naina Desai for respondent No. 2.

CORAM : F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED : 28th November, 2006

P.C.

1. Petitioner No.1 is a company incorporated under Companies Act, 1956 and petitioner No.2 is Chief Executive Officer. Respondent No.1 had invited bids. The petitioners were one of the bidders. Petitioners' technical bid was found to be in order. However, insofar as price bid is concerned, according to the petitioners, they are the lowest. As they have not submitted their price bid exclusive of taxes and as such they apprehend that their bid would be rejected.

2. On behalf of the petitioners, the learned Counsel has taken us through the various clauses of the tender documents. Clause (9) of the said documents reads as under:

> "At any time prior to the dead line for submission of bid, the employer may for any reason whether at his own initiative or in response to a clarification requested by a prospective bidder modify and bid document by issuance of an addendum. The addendum will be sent in writing to all prospective bidders who have purchased the bid document, for incorporation in the bid and will be binding on them."

. It is, however, submitted on behalf of the petitioners that in terms of clause (12), the price bid had to include all taxes, duties, royalties, octroi as also royalty under Minor Mineral Act, 1968. Respondent No.1, therefore, it is submitted, though had power to vary terms of the bid that could only be done by issuing an addendum. In the instant case, it is pointed out that at the pre bid meeting held on 21.09.2006, some of the bidders had sought clarifications. This was indicated to the parties by communication of 22nd September, 2006 along with clarifications. Under item No.7, the clarification sought was whether royalty is to be paid. The clarification issued by respondent No.1 reads as under:

> "To be paid by the contractor, but will be reimbursed by MADC on submission of suitable bills, only in case royalty is

> charged to them. Royalty should not be considered while calculating the bid price. In case of all the other taxes, they should be quoted separately, as no taxes will be applicable to SEZ area."

. The contention of the learned counsel for the petitioner is that, it was totally uncalled for and had nothing to do with the clarification and further it does not amount to addendum and as such the question of complying with the said clarification would not arise.

3. We have heard the learned counsel extensively. In the communication forwarded to all the parties including the minutes of the pre-bid meeting by communication dated 22nd September, 2006 respondent No.1 informed the bidders amongst other as under:

> "The minutes of pre-bid meeting with annexed drawings and clarifications along with this letter shall form part of the bid document and further part of the contract agreement. No further changes in the terms and conditions of the contract shall be permitted. Any offer received with any other deviations shall be summarily rejected without assigning any reason thereof."

4. It is, therefore, clear that apart from the clarifications, it was open considering clause 9 of the bid documents to respondent No.1 to issue an

addendum either on its own initiative or in response to clarification by prospective bidder. The clarification under item 7 though on the issue of royalty, it was open to respondent No.1 to have issued the addendum. Merely because it is included under the heading of the column reply, would not result in it ceasing to be an addendum, considering the paragraph in communication dated 22nd September, 2006, which we have quoted above. The other aspect of the matter would be that the clarification was issued on 21st September, 2006. The last date of submitting the bid was dated 20th October, 2006. The petitioner had received the communication of 22nd September, 2006. The petitioner did not proceed against the same and on the contrary submitted their bid. It is only after the price bid was open, have the petitioner come to this Court contending that are independent addendum had to be issued.

. We are unimpressed. It was open to respondent No.1 to issue the addendum by following the terms of the offer documents even if in the terms of document earlier tax was to form part of the price. The communication of 22nd September, 2006 made it clear that tax component should be quoted separately. The

petitioner has quoted with tax.

. On behalf of respondent No.1, the learned counsel submits that the issue had to be decided by the concerned committee and the committee will take the decision.

5. Considering the above, in our opinion, this would not be a fit case to exercise our extra-ordinary jurisdiction. More so, as the petitioners were aware of the clarification / addendum issued by respondent No.1 and waited till the price bid was open to file the present petition.

6. For the aforesaid reasons, we are not inclined to interfere in the exercise of our extra-ordinary jurisdiction. Hence, petition dismissed.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]